

From: Jim Cromie
To: microsoft.atr
Date: 1/23/02 2:58pm
Subject: Microsoft Settlement

Gentlemen,

Ive just read an interview with Judge Robert Bork, where he says..

<http://www.linuxplanet.com/linuxplanet/opinions/4020/2/>

"My initial response was, break 'em up," he replied. "A structural remedy. Dissolution into parts that could compete with each other.

"But that seems to be not in the cards now; I don't think the judge is going to do that if the government doesn't ask for it, and may not do it even if the government did ask for it.

"That's not going to happen, so I think we're stuck with a behavioral remedy which would have to be -- even if it tried to do something, even if it tried -- hard to write because as the technology changed Microsoft has shown a great ingenuity in getting around things in the past. But whatever difficulties there would be in a properly drawn behavioral remedy, this is not a properly drawn one."

"And I think it gives it a clear road to further monopolies. They can do to all kinds of products now what they did to the browser."

"What's likely to come out if it? I have no idea. It depends entirely upon how seriously the judge takes this thing. I hope she doesn't share the government's evident desire just to kick the thing away and get rid of it. This is a painful case -- I don't think Judge Jackson wanted to see it again. It's a lot of work, and it's hard to understand, and if she takes the line that 'if the government's satisfied, the hell with it,' then it's all over. I don't know her well enough to know how she'll react."

As Im sure youre aware, Judge Bork is not known for being a judicial activist.

There is no political axe being ground by him.

The Government won their case in open court, and now it must pursue proper remedies.

According to the Court of Appeals ruling, "a remedies decree in an antitrust case must seek to 'unfetter a market from anticompetitive conduct', to 'terminate the illegal monopoly, deny to the defendant the fruits of its statutory violation, and ensure that there remain no practices likely to result in monopolization in the future" (section V.D., p. 99).

To fail to do so leaves the DOJ open to suspicions of back-room dealings between the politicians (the DOJ in this case) and the politically connected. Whether or not it happened is irrelevant, the public perception, particularly in light of the Enron debacle, will not look favorably upon a weak settlement.

Thank you.

James Cromie